

**BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA**

DOCKET NO. 97-239-C

In Re:

Proceeding to Establish Guidelines
For an Intrastate Universal Service
Fund

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Motion For Continuance

ITC^DeltaCom Communications, Inc. ("DeltaCom"), by its attorneys, hereby moves the South Carolina Public Service Commission ("Commission") for a continuance of the hearing scheduled for January 28, 2004 and January 29, 2004 in the above-captioned docket. DeltaCom requests the Commission continue the hearing until a later date allowing DeltaCom and potentially other parties to submit additional discovery requests to the parties seeking additional funding from the Universal Service Fund ("USF"). As discussed herein, granting this Motion will not prejudice any party involved in the proceeding and will promote the greater public interest by obtaining a better understanding of the applicant's requests.

DeltaCom also asks the Commission to waive S.C. Code Ann. Regs. 103-840 concerning the requirement that all motions be reduced to writing at least ten days prior to the commencement of a hearing. Given DeltaCom only received information several days ago and given BellSouth seeks to file supplemental direct testimony, DeltaCom respectfully requests the Commission waive its regulations and grant DeltaCom's Motion.

In support of its Motion, DeltaCom provides the following:

I. BACKGROUND

1. On October 22, 2003, the Commission issued Notices for Requests of Intrastate Universal Service Funding for the following companies: PBT Telecom; Horry Telephone Cooperative; Home Telephone Company Bluffton Telephone Company; Hargray Telephone Company; and

ALLTEL South Carolina, Inc. On October 23, 2003, the Commission issued a Notice for Request of Intrastate Universal Service Funding for BellSouth Telecommunications.

2. In these Notices, the Commission instructed any party interested in intervening to do so by December 3, 2003. Out of an abundance of caution, DeltaCom filed its petition to intervene in a timely manner.

3. BellSouth and AllTel pre-filed direct testimony on December 31, 2003. Bluffton, Home, and Hargray Telephone Companies, PBT Telecom, and Horry Telephone Cooperatives prefiled direct testimony also on December 31, 2003.

4. Subsequently, on January 6, 2004, Bluffton, Home, and Hargray Telephone Companies, PBT Telecom, and Horry Telephone Cooperatives prefiled revised direct testimony.

5. Also, ALLTEL filed revised direct testimony on January 12, 2004.

6. On January 6, 2004, DeltaCom served its First Set of Interrogatories and its First Requests for Production on BellSouth. DeltaCom requested responses by January 17, 2004.

7. On January 8, 2004, DeltaCom served its First Set of Interrogatories and its First Requests for Production on ALLTEL. DeltaCom requested responses by January 18, 2004.

8. On January 6, 2004, DeltaCom served its First Set of Interrogatories and its First Requests for Production on Bluffton, Home, and Hargray Telephone Companies, PBT Telecom, and Horry Telephone Cooperatives. DeltaCom requested responses by January 17, 2004.

9. On January 20, 2004, BellSouth served its responses to DeltaCom's discovery requests.

10. On January 20, 2004, ALLTEL served its responses to DeltaCom's discovery requests.

11. Subsequently, on January 20, 2004, BellSouth filed supplemental testimony and exhibits.

II. DISCUSSION

12. In responding to DeltaCom Interrogatory No. 3, BellSouth objected to producing any documents related to an audit. However, BellSouth further stated,

“[m]embers of the Commission’s non-advisory Staff have, on occasion, requested information from BellSouth regarding the State USF, and BellSouth has provided the requested information, often verbally.

See Attachment 1.

13. By acknowledging information was requested by Commission staff and provided to Commission staff, Delta Com seeks additional time to request information concerning these discussions. DeltaCom specifically requested information concerning an audit. Per BellSouth’s response, it appears no formal audit was conducted; however, information concerning the State USF fund was discussed between the Commission and BellSouth.

14. Clearly, the South Carolina Rules of Civil Procedure allow the discovery of all relevant information. Specifically, South Carolina Rule 26(b)(1) provides:

Parties may obtain discovery regarding *any matter, not privileged, which is relevant to the subject matter involved in the pending action*, whether it relates to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of books, documents, or other tangible things and the *identity and location of persons having knowledge of any discoverable matter*.

15. Also, S.C. Code Ann. Regs. 103-851 provides for *discovery of any material relevant to the subject matter involved in the proceeding*. DeltaCom is well within the Commission rules and regulations entitling them to the discovery of relevant material.

16. Since BellSouth is asking for additional funds of approximately \$8 million, clearly determining how BellSouth used the dollars it previously obtained from the USF is relevant.

Information passed through verbal discussions is relevant to this determination. DeltaCom seeks an opportunity to ask BellSouth about these "verbal" exchanges.

17. As a result of DeltaCom's interrogatories, BellSouth admits it prefiled erroneous testimony and seeks to file supplemental testimony.¹ These mistakes are exactly why DeltaCom asked questions concerning BellSouth's use of the USF. Thus, DeltaCom believes it is in the public's best interest to continue the hearing scheduled for January 28 and January 29 until all discovery is completed to fully develop an accurate portrayal of the use of the Universal Service Fund. Such a continuance will not prejudice the parties seeking additional USF funding.

III. CONCLUSION

Therefore, for the foregoing reasons, DeltaCom respectfully requests that the Commission waive S.C. Code Ann. Regs. 103-840 and grant its Motion to Continue the Hearing scheduled for January 28 and January 29 in the above-captioned docket.

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Columbia, South Carolina
January 22, 2004

¹ BellSouth initially stated it removed \$22.760 million annually from the state USF. However, it subsequently discovered it actually removed \$24.677 million. This ten (10)% discrepancy is exactly why DeltaCom seeks to continue the hearing.

CERTIFICATE OF SERVICE

This is to certify that the undersigned is employed by Sowell Gray Stepp & Laffitte, LLC, attorneys for ITC^DeltaCom and that she has caused the foregoing to be served upon the person(s) named below, by placing copies of same in the United States Mail, postage prepaid, addressed as follows and via electronic mail:

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Louanne Horton

Jan. 22, 2004

BellSouth Telecommunications, Inc.
SCPSC Docket No. 97-239-C
ITC^DeltaCom's First Set of Interrogatories
January 6, 2004
Item No. 3
Page of 1 of 1

REQUEST: Has the South Carolina Public Service Commission or any other entity audited BellSouth's use of the State USF?

(a) If the answer to this Interrogatory is "yes," provide the name of the auditor(s), the date(s) the audit took place, and the period of time covered by the audit(s).

(b) If the answer to this Interrogatory is "yes," provide the results of the audit(s).

RESPONSE: BellSouth objects to this Interrogatory on the grounds that it is vague, ambiguous, overly broad, imprecise, and utilizes terms that are subject to multiple interpretations but that are not properly defined or explained for purposes of these Interrogatories.

Subject to and without waiving these objections, members of the Commission's non-advisory Staff have, on occasion, requested information from BellSouth regarding the State USF, and BellSouth has provided the requested information, often verbally. BellSouth objects to responding to subparts (a) and (b) of this interrogatory to the extent that they may be intended to apply to such requests, and BellSouth objects to producing any documents that may be associated with such requests, on the grounds that doing so would be unduly burdensome.

BellSouth is audited periodically by other entities for various reasons, but no such audit has specifically addressed the State USF. BellSouth objects to responding to subparts (a) and (b) of this interrogatory to the extent that they may be intended to apply to such audits, and BellSouth objects to producing any documents that may be associated with such audits, on the grounds that: doing so would be unduly burdensome; such documents and information are not relevant to the subject matter of this proceeding and do not appear reasonably calculated to lead to the discovery of admissible evidence; and such information includes confidential, proprietary, and/or trade secret information.

RESPONSE PROVIDED BY: Rufus Moore - Manager
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